IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.7407 OF 2005

M/s.Repro India Ltd. ...Applicant

vs.

M/s.Great Folks Communication & Ors. ...Respondents

Mr. M.S.Mohite for the Applicant
Mr.Ankush Bensal i/b M/s.Bansal & Bansal for Respondent Nos.1 and 2
Ms S.V.Gajare, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 11,2006.

P.C.:

1. By order dated 18th July 2006 this Court directed that the matter will be finally disposed of at the admission stage. By order dated 16th August 2006, this Court directed the Applicant to serve notice to the Respondents for final disposal at the admission stage.

2. This Application is made by the Applicant who was the complainant in a complaint under section 138 of the Negotiable Instruments Act, 1881. By order dated 12th September 2005 the learned Metropolitan Magistrate, 13th Court, Mumbai dismissed the complaint filed by the Applicant by exercising power under section 256 of the Code of Criminal Procedure, 1973. Considering the nature of the order, leave to prefer an Appeal is granted. Appeal is admitted and taken up for hearing forthwith.

3. The learned Advocate for the Applicant pointed out that

only on last two dates the representative of the complainant was absent. He placed reliance on medical certificates at Exh.F (collectively) which according to the Applicant show that the representative of the Applicant was sick on the relevant dates. He, therefore, submitted that the order impugned may be set aside and the complaint may be restored.

4. The learned Counsel for the first and second Respondents opposed the submissions and pointed out that if one particular officer of the Applicant-company was not able to attend the court, any other authorised representative of the Applicant could have attended the case. He submitted that the certificates which are annexed to the Application cannot be relied upon as the same are suspicious. He submitted that in view of the order of acquittal, presumption of innocence has been strengthened and no interference is called for.

5. I have considered the submissions. On 21st July 2005 the representative of the complainant filed an Affidavit of examination-in-chief. The said Affidavit was taken on record and certain documents were marked as exhibits. The next date was fixed as 1st August 2005. The Roznama discloses that due to heavy rain, the case was adjourned to 25th August 2005. On 25th August 2005, the representative of the complainant who had filed the Affidavit of examination-in-chief was not present. However, the Advocate for the Applicant was present who filed an Application for exemption which was granted by

the learned Trial Judge. It must be noted that on that date even the Advocate for the accused filed an Application for adjournment which was granted and the case was adjourned on 12th September 2005. On 12th September 2005 the Applicant and his Advocate were absent and therefore, order impugned has been passed.

6. The reliance is placed on medical certificate of the authorised representative of the complainant which shows that on 12th September 2005 he was allegedly suffering from viral fever. The medical certificates annexed to this application show that even the Advocate for the complainant was suffering from Amoebic Colitis and could not attend the court on that date. The learned Counsel for the Respondents questioned the genuiness of the said certificates. However, the fact remains that the Applicant had prosecuted the private complaint diligently till the date on which complaint was dismissed.

7. In my view, a case is made out for setting aside the impugned order and for restoration of the complaint. At this stage, the learned Counsel for the Respondents states that if this court is inclined to restore the complaint, the case may be directed to proceed from the stage at which it was on 12th September 2005 and the concerned witness of the Applicant be directed to remain present for cross examination on the next date.

8. Hence, I pass the following order :

i) Appeal is allowed.

ii) The impugned order dated 12th September 2005 is quashed and set aside and the complaint bearing case No.365/S/2004 is restored to file of the learned Metropolitan Magistrate, 13th Court, Dadar, Mumbai.

iii) The parties are directed to appear before the learned Metropolitan Magistrate on 13th November 2006 at 11.00 a.m. On that date the representative of the Applicant who has filed the Affidavit of evidence will personally remain present and will offer himself for cross examination.

iv) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE